



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 20 2013

Tom Reeder
Director
Division of Water Resources
North Carolina Department of Environment
and Natural Resources
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

Dear Mr. Reeder:

The purpose of this letter is to approve the revisions to *15A NCAC 2B Surface Water and Wetlands Standards, Section .0300 Assignment of Stream Classification*, submitted to the Environmental Protection Agency for review by letter, dated September 19, 2012, and received on October 5, 2012. This letter addresses the revision to modify the use designation for four waterbodies from Class C and Class Water Supply (WS)-V to Class WS-IV, WS-IV Critical Area (CA) and WS-IV Protected Area (PA). The four waterbodies that are included in this approval are as follows:

- South Fork New River (*15A NCAC 02B .0307 – New River Basin*).
- Neuse River (*15A NCAC 02B .0315 – Neuse River Basin*).
- Haw River (*15A NCAC 02B .0311 – Cape Fear River Basin*).
- Dan River (*15A NCAC 02B .03013 – Roanoke River Basin*).

The protective management strategies for WS-IV watersheds are outlined in 15A NCAC 2B .0104 Considerations/Assigning/Implementing Water Supply Classifications and 15A NCAC 2B .0216 Fresh Surface Water Quality Standards for WS-IV waters.

A certification, dated September 17, 2012, was included in this submission from the North Carolina Attorney General stating that this revision was duly adopted pursuant to State law and is valid and enforceable in the State of North Carolina. In accordance with 40 CFR Section 131.21(c), new and revised State and Tribal water quality standards are not effective for Clean Water Act (CWA) purposes until approved by EPA. The EPA approves the revision modifying the designated use for these four waterbodies with clarification regarding that approval below.

South Fork New River Class C to WS-IV CA and WS-IV PA

In 2009, the Town of Boone requested that a segment of the South Fork New River be reclassified from Class C to Class WS-IV CA and Class WS-IV PA for a new drinking water intake to be placed in the river. Class C applies to all fresh waters of the state and includes protection for aquatic life propagation, maintenance of biological integrity, fishing, wildlife, secondary recreation, agriculture and any other usages except primary recreation or as a water supply. The WS-IV category is for those waters that are a source of water supply for drinking, culinary, or food-processing purposes for those users where a more protective WS-I, WS-II, or WS-III classification is not feasible. WS-IV waters must also meet all of the requirements for best usage specified for Class C waters under 15A NCAC 02B .0211. The CA

designation is for the area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed, typically the land and waters within 0.5 miles above the intake. The PA is the area adjoining and upstream of the CA in a WS-IV watershed. In addition, portions of these waters already have either a High Quality Water (HQW) designation, trout water designation (Tr) or special management strategies (+) which are unaffected by these revisions.

A public hearing was held in Boone, North Carolina on August 30, 2011. Forty-three people registered at the hearing with thirteen providing oral comments. Six provided support for the revision, six were opposed and one had concerns but did not oppose the classification. Eight letters were received with neutral or positive support. Thirty-seven letters and a petition with 188 electronic signatures were received stating concerns or a stance against the reclassification. Those comments included concerns regarding the impact from reduced flows on recreation and aquatic life in the South Fork New River, a State and National Scenic River and an American Heritage River. The State's response to comments stated that the concerns were outside the focus of the reclassification process and that they were addressed by the North Carolina Division of Water Resources (DWR) during an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA). The EA, which was not submitted as part of this review, resulted in a Finding of No Significant Impact. The effective date of this reclassification for State purposes was March 1, 2012.

Neuse River Class WS-V to WS-IV

In 2008, Johnston County requested that two segments of the Neuse River and an abandoned quarry be reclassified to include the WS use designation in anticipation of constructing a public water supply intake and using the quarry for public water supply storage. Portions of the river are already located within the CA and/or PAs of existing WS segments and therefore do not need to be reclassified. The river from a point 1.7 miles upstream of Bawdy Creek to a point 1.4 miles downstream of Gar Gut is to be reclassified from WS-V to WS-IV. All of the reclassified segments already have the Nutrient Sensitive Waters (NSW) supplemental classification, which is unchanged by this revision.

Staff within the DWR concurred with the county's proposal and the reclassification. DWR completed an EA under the NEPA for this project which resulted in a Finding of No Significant Impact. The EA was not provided to the EPA as part of this submittal. In 2011, the Division of Water Quality (DWQ, now the DWR) completed studies that indicated the waters met the State's water supply standards, except for the quarry which had high chloride levels. Once water is pumped into the quarry and residence time is reduced, the chloride levels are expected to be reduced.

A public hearing was held on December 13, 2011, in Princeton, North Carolina. Ten people registered at the hearing. Two individuals made comments, one in support and one with concerns but not in opposition. Two letters were received in support of the proposal and two letters were received which did not support the proposal. The issues presented in opposition included 1.) Lack of need for the amount of water supply proposed, 2.) Concern regarding return flows, and 3.) Flow impacts on downstream users including impacts to recreation and aquatic life. The DWQ provided responses to each of these concerns in the Report of Proceedings which stated that the concerns were addressed in the EA and that the reclassification process was not the appropriate process for reviewing those concerns. The DWQ also clarified the additional protection measures that would be put in place as a result of the reclassification. The effective date of the reclassification for State law was July 1, 2012.

Haw River Class WS-V NSW to WS-IV CA NSW and WS-IV PA NSW

In 2004, the City of Greensboro requested that a portion of the Haw River and the associated watershed in Alamance, Caswell, Guilford and Rockingham Counties be reclassified to allow the continuation of an existing use of an emergency potable water supply intake. The permanent intake, constructed during the drought of 2002, was in use from October 2007 to April 2008. Therefore, water supply is an existing use in these segments. The waters were classified as WS-V NSW. An evaluation was completed and the State determined that WS-IV was the most appropriate WS classification for this waterbody due to its location in moderately to highly developed watersheds.

A public hearing was held on September 29, 2011, in Reidsville, North Carolina. Five people registered at the public hearing, with just one person who spoke to ask a question about the reclassification. Two letters were received during the comment period, neither of which stated a preference for reclassification.

The section of the river located approximately 0.5 miles upstream of the intake is reclassified as the CA. The PA extends 18,500 acres and covers the entire tributaries of Rose Creek, Giles Creek and the lower portion of Little Troublesome Creek. All affected jurisdictions passed the required ordinances for implementation of the reclassification. The effective date of the revision for State purposes was March 1, 2012.

Dan River from Class C to WS-IV CA and WS-IV PA

In 2002, consultants for the City of Roxboro requested that a segment of the Dan River be reclassified from Class C to WS-IV CA and WS-IV PA. The purpose was to install a drinking water intake to serve Roxboro as well as the Towns of Yanceyville and Milton.

The segment to be reclassified extends from North Carolina into Virginia. The entire CA is located within North Carolina, however, the PA is split between North Carolina and Virginia. Both states have signed a Memorandum of Agreement regarding this reclassification and Virginia officials have begun reclassification according to their own use change provisions.

According to DWQ studies, the waters meet the criteria for the WS-IV designation and are supported by the DWR. The NC Division of Environmental Health has stated that the proposed intake is not the most appropriate water supply source based on the adequacy of water supply sources currently being used in the area. However, the documents submitted by DWQ indicate that an EA was completed for this project which resulted in a Finding of No Significant Impact. The EA was not submitted with the use classification revision and therefore was not reviewed as part of this reclassification.

A public hearing was held on March 17, 2011 in Providence, North Carolina with twenty-two people in attendance. Six speakers provided comments with two opposed, one in support and the remaining not stating a preference. One letter was received in support, one neutral and 18 letters that opposed the reclassification. The issues presented in opposition included 1.) Lack of public notice, 2.) Concern regarding interbasin transfer, 3.) Lack of need/concern the water would be sold, 4.) Lack of Caswell County involvement and support, 5.) Adverse impacts/lack of water conservation, 6.) Increased Virginia land restrictions, and 7.) Tighter restrictions on land use. The DWQ provided responses to each of these concerns in the Report of Proceedings which stated, in some instances, that some of the concerns were addressed in the EA. NC also clarified the additional protection measures that would be put in place as a result of the reclassification. There was no date provided for the Virginia waters.

EPA Review

The EPA notes that three of these revisions (South Fork New River, Neuse River and the Dan River) included multiple oral or written comments concerning potential impacts to the waterbodies due to the new or increased withdrawal of water for water supply. In the response to comments, North Carolina articulated that the process used to review the change in use classification was to determine if the conditions for assigning a new use classification were met, specifically, Rule 15A NCAC 2B .0104, Considerations/Assigning /Implementing Water Supply Classifications and Rule 15A NCAC 2B .0216 and Fresh Surface Water Quality Standards for WS-IV Waters. North Carolina determined the conditions under both Rules were met, and further stated that the new classifications provided additional protections assigned to WS classification segments.

Based on a review of the state submittal for purposes of reclassification of these waters, the EPA finds that the revisions retain all aquatic life uses and supporting water quality criteria of the State's Class C designation, which also apply to WS-IV CA waters. Therefore, since the water quality criteria and uses of the State's Class C designation provide for protection of the CWA Section 101(a)(2) uses (fishable/swimmable), this revision is consistent with the goals of Section 101(a) of the CWA and the implementing regulations at 40 CFR Part 131. In accordance with Section 303(c) of the CWA and 40 CFR Part 131, the EPA is approving these revisions. In accordance with 40 CFR 131.21(c), the revised State waterbodies' primary and supplemental classifications are now considered effective for CWA purposes.

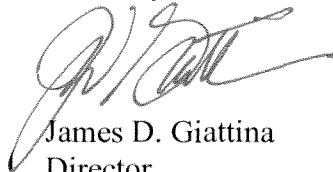
As stated by DWQ, the EPA would like to clarify that the process used to review the change in use classification was separate from the EA process used to determine the impacts of the surface water withdrawals on the water quality standards of the waterbodies. Based on conversations with DWQ, the EPA understands that a review was conducted by the DWR to assess the impact to the aquatic resources due to the water withdrawals. That process included a review through the State Environmental Protection Act (SEPA) or the NEPA and an EA. The submittal received from the State included that a Finding of No Significant Impact was issued in each case with an EA. The EPA recommends the DWQ review the DWR EAs in future use designation revisions to ensure that the proposed changes to water quantity will be consistent with the EPA-approved State narrative and numeric criteria and provide protection of designated uses. The EPA also recommends the DWQ ensure future use designation revisions are consistent with and protect for all Class C uses, including for aquatic life propagation, maintenance of biological integrity, fishing, wildlife, secondary recreation, agriculture and any other usages other than drinking water.

In addition, some of the waters for which new water withdrawals have been put in place are or were listed as impaired and/or may have had a TMDL completed. DWQ is advised that when flows are reduced on a waterbody, the TMDL should be reviewed and/or revised to take those reduced flows into account. Similarly, should the reduced flows be in a segment with an NPDES permit, those permits should be reviewed to ensure that the reduced flows are used in the calculations for effluent limits and permit conditions be revised as appropriate.

The EPA would like to thank DWQ's Elizabeth Kountis for her support in the review of this submittal, including the clarification of how the reclassifications and the EA's were completed as well as all of her ongoing work in the Standards and Classifications Unit of DWQ.

If you have any questions, please feel free to contact me at (404) 562-9345, or have your staff contact Ms. Lisa Perras Gordon at (404) 562-9317.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Giattina', written over the printed name.

James D. Giattina

Director

Water Protection Division

cc: Tom Belnick, NC DWQ NPDES
Kathy Stecker, NC DWQ TMDL
Dan Olone, Drinking Water Section, US EPA
Mark Nuhfer, US EPA NPDES
Shawneille Campbell-Dunbar, US EPA TMDL

